Supreme Court, U.S.
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No. 85-1740

In The

Supreme Court of the United States

October Term, 1985

RICHARD A. KANANEN and
MARILYN T. KANANEN,

Petitioners,

v.

SUN BANK OF OKEECHOBEE,
f/k/a/ COMMERCIAL BANK OF
OKEECHOBEE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

WHETHER THE LOWER COURTS' USE OF SUMMARY JUDGMENT PROCEDURE VIOLATES THE CONSTITUTIONAL RIGHT TO A JURY TRIAL OR OTHERWISE RAISES A SUBSTANTIAL FEDERAL QUESTION.

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STATEMENT OF THE CASE

The proper party Respondent in this case is Sun Bank of Okeechobee ("Sun Bank"), formerly known as Commercial Bank of Okeechobee, Florida. Sun Bank, N.A.,

and Sun Bank, Inc., were not parties below and have been erroneously named as Respondents by Petitioners.

The proceeding began as a suit by Sun Bank against Petitioners in the Circuit Court of the Nineteenth Judicial Circuit of Florida, seeking judgment on a promissory note against Petitioners. At a hearing on Sun Bank's motion for summary judgment, Petitioners admitted that the security for the note had been disposed of and that at least one payment on the note had not been timely made. (R. 37, 54, 63). Based on these admissions, the depositions of Petitioners and affidavits submitted by Sun Bank, the trial court entered a final summary judgment for $9,880.36 against Petitioners for the balance of the note and interest. (App. IX-X; references are to Petitioners' appendix).

Petitioners filed two separate appeals with the Fourth District Court of Appeal of Florida, case numbers 84-972 and 85-1531. As will be explained, Case 84-972 reached the Supreme Court of Florida and has now been brought before this Court. Nevertheless, Petitioners' appendix includes three orders from Case 85-1531: a *per curiam* affirmance (App. VI), a denial of a motion for rehearing (App. V), and a denial of motions for writs of prohibition and error *coram nobis* (App. IV). Case 85-1531 is not before this Court. In that appeal, Petitioners unsuccessfully argued that their privacy had been invaded, that venue should have been transferred, and that their counterclaim should not have been dismissed as a "sham pleading." No appeal to the Supreme Court of Florida was attempted in Case 85-1531.

In Case 84-972, Petitioners argued that the promissory note was a forgery and that the trial court failed to

credit them with all payments made on the note. The sole constitutional argument raised in their initial brief in that proceeding consists of one sentence:

> Kananen's still demand a trial by jury as guaranteed by the Constitution State of Florida, Article I, Section II, and Article I, Section IX and under the Constitution of the United States of America, XIV Amendment.

Petitioner's reply brief in that proceeding also made the following "constitutional" argument:

> The Kananen's have not received due process nor equal protection which will be proved in related cases. The Kananen's are demanding a full investigation of the prostitution of the Court file in the Ninteenth [sic] Circuit. The Kananen's will also prove that the transcripts of all hearings have been either sanitized or a fantasy of some one's imagination. Unfortunately for Sun Bank the words "genuine and material" will stand four square against them. The cancelled checks, the complaint issued by Sun Bank as amended and the forged contract are all "genuine and material" facts that are in controversy.

The Fourth District Court of Appeal of Florida affirmed the final summary judgment, *per curiam* and without an opinion on September 25, 1985. Rehearing was denied and Petitioners then appealed to the Supreme Court of Florida. That appeal was dismissed for want of jurisdiction as no state statutory or constitutional provision had been declared invalid by the district court of appeal, as required by Article V, Section 3(b)(1), Florida Constitution. (App. III). Petitioners then filed a "motion for writ of error" in the Supreme Court of Florida, which treated that motion as a motion for reinstatement and

denied it on January 13, 1986. (App. II). The petition for writ of certiorari is apparently directed at this final dismissal of the appeal.

SUMMARY OF THE ARGUMENT

Petitioners raised no substantial federal question in the state court. Even if their *pro se* efforts are liberally construed, the sole arguable issue raised below is whether summary judgment constitutes a denial of the right to trial by jury. There simply is no right to trial by jury when there are no disputed material facts. *Fidelity & Deposit Co. of Maryland v. United States*, 187 U.S. 315, 320, 23 S. Ct. 120, 122, 47 L. Ed. 194, 198 (1902).

REASONS FOR DENYING THE WRIT

THE COURTS' USE OF SUMMARY JUDGMENT PROCEDURE DOES NOT VIOLATE THE CONSTITUTIONAL RIGHT TO A JURY TRIAL NOR DOES IT OTHERWISE RAISE A SUBSTANTIAL FEDERAL QUESTION.

The Kananens' petition attempts to present twenty separate issues for review, but essentially a single argument is made: that the trial court disregarded the "evidence" of Petitioners in granting summary judgment.

Rule 1.510, Florida Rules of Civil Procedure, sets forth the summary judgment procedure for Florida courts.

It approximates Rule 56 of the Federal Rules of Civil Procedure and permits resolution of an action upon affidavits and depositions if they establish that there is no dispute of material fact and that the moving party is entitled to judgment as a matter of law. Petitioners have failed to assert how this procedure was abused below, particularly (as previously noted) when their own depositions and statements at the hearing established their liability on the note.

Arguably, Petitioners raised a constitutional question below by asserting that the summary judgment procedure itself is a denial of the right to trial by jury. However, this cannot be considered a substantial federal question.

This Court has previously held that the summary judgment rule does not deprive a litigant of the right to trial by jury. As stated by this Court in 1902:

> It prescribes the means of making an issue. The issue made as prescribed, the right of trial by jury accrues. The purpose of the rule is to preserve the court from frivolous defences and to defeat attempts to use formal pleading as means to delay the recovery of just demands.

Fidelity & Deposit Co. of Maryland v. United States, 187 U.S. 315, 320, 23 S. Ct. 120, 122, 47 L. Ed. 194, 198 (1902). *See also, Port of Palm Beach District v. Goethals*, 104 F.2d 706, 709 (5th Cir. 1939).

Petitioners simply have failed to raise a question which is properly reviewable by this Court on a petition for a writ of certiorari.

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CONCLUSION

The petition for writ of certiorari should be denied for want of a substantial federal question.

Respectfully submitted,

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